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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of:	)	
	)	
Second Periodic Review of the FCC's **Rules** and Policies Affecting the Conversion to Digital Television	)	MB Docket No. 03-15

To: Kim Matthews, Policy Division
Media Bureau

Comments of WDLP Broadcastins *Co.* LLC

WDLP Broadcasting Co., LLC ("WDLP"), a 100 percent Hispanic owned television licensee [1], respectfully submits these Comments in the above-captioned DTV rulemaking proceeding.

FCC Sensitivity to Small Businesses

WDLP commends the FCC staff and the Commissioners themselves for an NPRM (released January 27, 2003) that is repeatedly sensitive to the special needs and problems of small businesses in the transition to digital television broadcasting. Periodically reviewing this expensive and complex process, and being willing to fine-tune its rules and policies to evolving marketplace realities is not just fair and equitable -- it is an essential means of ensuring that the DTV rollout focuses on the interests of both television consumers and also the broadcasters who are licensed to serve them. Particularly commendable is the FCC's baseline determination not to treat the nation's nearly 2000 TV licensees or the more than 200 TV markets as "one size fits all."

[1] WDLP and its affiliate companies **are** licensees of television stations in South Florida.

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Summary of Comments

These brief comments, emanating from a Hispanic-owned company that operates full power, Class A and LPTV television stations in a Top Twenty TV Market, are premised on one underlying principle -- the FCC must show flexibility and must differentiate among various markets and among disparately capitalized broadcasters. Indeed, Congress has instructed that, to do otherwise would be arbitrary and capricious. *Cf.* 47 USC 154(j).

DISCUSSION

1. Despite the FCC's herculian efforts, and because of economic and technical reasons beyond the FCC's control, the DTV transition has proceeded at a slower pace than either the FCC or Congress anticipated in 1997. With less than 45 months until the planned consummation of the DTV transition, very few consumers own a digital TV receiver. At the Best Buy retail outlet located closest to the FCC Headquarters, the cheapest DTV set costs $1699. nearly six (6) times the cost of a comparable analog set. Few of the TV sets at the Headquarters of the FCC can receive DTV signals. This lack of DTV set penetration is the first reality that must be acknowledged; and this fact has huge practical ramifications, as broadcasters now consider their DTV operations largely to be a "throw away" --merely signals emitted to a largely non-existent audience.

2. In an essentially wired nation, the FCC must require cable systems and other MVPD satekeepers to carry EVERY digital TV station, including Class A stations. [2/] As has been persuasively documented and as the FCC staff knows from its own collective experience, an overwhelming majority of Americans view television through cable or some other MVPD gatekeeper. While television broadcasters reach a small (and diminishing percentage) of their audiences over the air, their economic survival depends increasingly on the beneficence of these MVPD gatekeepers. And beneficence is a rare disposition among MVPD's whose inherent interests increasingly lie with programs produced "in house" or through affiliated or wholly-owned cable networks.

The NCTA, conceding this reality (and hoping to stave off a DTV must carry directive from the FCC), wrote Chairman Powell last July, pledging free carriage for the signals of up to five DTV stations OR cable networks. [3/] In practice, however, this "either/or" promise by the ten largest MSO's appears to have lopsidedly favored cable carriage of DTV signals from cable networks -- not DTV stations. *So,* while the NCTA's promise was a good start, what is now needed is the "fine tuning" by the FCC in

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[2/] WDLP recognizes that DTV Must Carry issues are being resolved in a separate proceeding; however, FCC decisions are not made in a vacuum; and the FCC's rulings in this rulemaking cannot be divorced from the FCC's eventual decision on the crucial issue of DTV signal carriage by these gatekeepers. More particularly, should the FCC choose NOT to require DTV must carry, then its decisions in this rulemaking must be even more accommodative to DTV licensees and especially less capitalized DTV broadcasters.

[3/] See NPRM at note 19.

requiring cable systems and other **MVPD's** to carry the signals of all DTV broadcast stations. **That outcome is a condition precedent to a proper resolution of the issues in this rulemaking.** [4/]

3. Channel Election. We favor establishing the same deadline for channel election as for replication and maximization protection, not only to afford more uniformity but to give smaller capitalized broadcasters more flexibility in delaying the purchase of the more expensive equipment required for maximization. And that deadline should be July 1, 2006, for all but the Top Thirty markets (whose deadline would be July 1, 2005). [5/]

4. Maximization. We favor establishing the interference protection deadline (maximization) as late as practicable, given the flexibility that such a policy provides for smaller capitalized broadcasters. Moreover, for practical reasons discussed above, the deadline should be set only after 85% market penetration has been met. For those broadcasters who do not replicate/maximize before the deadline, the FCC should use this spectrum opportunity to accommodate low power TV permittees and licensees to file Displacement Applications (as minor changes). Affording a filing window for existing low power TV broadcasters to improve their limited service is the least the FCC could do for these regulatees, the stepchildren of the DTV transition.

[4/] A fortiori, cable systems MUST "pass through" the broadcasters' digital signal (including HDTV) to their subscribers.

[5/] A cut-off at the Top Thirty markets is more appropriate than at the Top 100 markets, just as it was with respect to the build-out deadlines.

5. Expansion of Band-Clearing Policy. The NPRM overlooked one "slamdunk" opportunity for the FCC to expand its general band-clearing policy and to hasten both the DTV rollout and the recovery of analog spectrum. The FCC should encourage any licensee who owns both LPTV and full power analog stations in a market, and who has commenced service on its DTV channel, to surrender its analog TV license (either voluntarily or through an agreement with a third party), as long as city-grade, analog service is maintained to the community of license via an LPTV facility. Such flexibility would have two important public interest benefits. First, it could enable the licensee to achieve operating economies that would provide greater resources for its DTV build-out.

Second, it would free up six megahertz of spectrum for more efficient use. Thus, while the FCC has already approved numerous band-clearing arrangements for out-of-core analog licensees, the "early" surrender of in-core analog spectrum will both (a) provide in-core channel opportunities for DTV permittees in the market who presently hold out-of-core DTV channel allocations and (b) provide spectrum use opportunities for Class A and displaced LPTV licensees and permittees. Indeed, the provision of more in-core channel opportunities for nearly 200 out-of-core DTV permittees/licensees is reason enough to expand the FCC's band-clearing policies and to afford a broadcaster the flexibility to surrender "early" its

full power analog channel when no analog service will be lost. [6]

Finally, an expansion of the FCC's policy in this regard would be consistent with the NPRM's proposal to allow satellite TV stations to "flash cut" to digital broadcasting at the end of the DTV transition. See NPRM at Para. 127-8. The FCC's policy in both instances is to alleviate the DTV burdens on smaller capitalized TV broadcasters and to give them more flexibility during the DTV transition period.

6. Definition of TV Market. For the well articulated reasons cited in the NPRM (at Para. 100-101), the term "television market," as used in 47 USC 309(j)(14)(B), should be defined as the DMA. Such construction appears compelled by historical context and by the provision of the statute that requires the FCC to grant an extension [of the analog recovery deadline] to "any station...in any television market," which contemplates that stations will be in DMA's. See 47 USC 309(j)(14).

Moreover, as the FCC has recognized repeatedly, a station's economic market and service area often exceeds its "Grade B contour." See NPRM at note 100. Finally, if a Grade B contour definition were accepted (rather than a DMA definition), and because some stations's Grade B contours cover parts of more than one DMA (e.g., Baltimore/DC), the DTV transition would be unduly prolonged by the grant of extensions until the 85% test was met in both of the DMA's). The correct definition is the DMA.

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[6] There are 186 DTV allotments in the out-of-core spectrum that must be accommodated before the DTV transition is completed. See NPRM, notes 44 and 55.

7. FCC construction of the "15% Test". The statute provides three grounds by which a licensee could obtain an extension of the *2006* analog spectrum recovery deadline. See 47 USC 309(j)(14). By one of these tests, a station may obtain an extension of that deadline if 15% of the TV households in the market, inter alia, do not subscribe to a cable system that carries at least one digital signal of EACH of the TV stations broadcasting such a signal in the markets. The FCC asks, does the statute mean that the cable system must carry one DTV signal from each television station in the market that broadcasts a digital signal? The answer is a resounding -- yes.

First, the plain language could not be clearer. "Each" means each -- every one. Second, the legislative history supports that interpretation.[7] Third, that interpretation furthers one of the core goals of this statutory provision -- to ensure that a significant number of consumers does not lose access to television service before the DTV transition is complete. Finally, the statutory requirement that a cable system carry each DTV station also means each Class A or LPTV station that transmits a disital television siqnal. Indeed, any other interpretation would violate Congressional intent in Sections 307(b) and 309(j)(14) of the Act.

8. DTV Station Identification. Again, we suggest maximum flexibility with respect to DTV station identification. In recent years, the FCC has tolerated a wide divergence of practices with

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[7] See NPRM at para. *86* ("each local television station broadcasting a digital television serivce signal. . . .").

respect to a station's means of identifying itself. "NBC4, Los Angeles" is technically not in compliance with 47 CFR 73.1201(b) ["call letters immediately followed by the communities specified in its license"]. "Fox 5, Washington, DC, does not even mention the station's call letters, "WTTG." But the purpose of the FCC's rule -- to let the public know the essential identity of the station so the viewer might contact that station or the FCC about its programming -- is certainly met by such identifications.

Accordingly, the FCC should show flexibility in adopting a rule for DTV station identification -- any combination of call sign or channel number (and the community of license) should suffice.

Respectfully submitted,

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April 21, 2003